HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII, Rule 32 (2)(b)

Description of the case.

A.O. No. 135 of 2005

Maheshwri Devi Appellant

Versus

Madan Singh & others Respondents

Approved for reporting.

~~Not approved for reporting~~

Date of decision 07.11.2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 135 of 2005

Smt. Maheshwari Devi w/o Sri Mahesh Singh R/o village Chaura Dhek, P.O. Karnkarayat P.S. Lohaghat, District Champawat ..... Appellant

Versus

1. Madan Singh s/o Sri Vikram Singh Fartyal, R/o village Karnkarayat, P.O. Karnkarayat, P.S. Lohaghat, District Champawat
2. Ms. Beenu Bhandari d/o J.S. Negi Opposite Manav Kendra, Subhash Nagar, Dehradun, District Dehradun
3. Sunder Singh Dhek s/o Sri Har Singh Dhek, village Malla Dhek P.S. Lohaghat, Tehsil & District Champawat .....Respondents

Sri M.C. Pandey, Advocate for the appellants
Sri prabhakar Joshi, advocate for respondent no.2.

Dated: November 7, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) Heard Sri M.C. Pandey, counsel for the appellant and Sri Prabhakar Joshi counsel for respondent no.2.

2) This appeal is against the award-dated 28.2.2005, passed by the Motor Accident Claims Tribunal, Champawat, by which the claim petition preferred by the appellant has been dismissed.

3) The appellant preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of injuries sustained by her in a motor vehicle accident. According to the claimant on the fateful day on 24.8.2002 the

appellant was coming to her home from Tyarsaun. At about 6.00 PM when she reached near her house, a motorcycle No. UP 07A/1618, which was being driven by Sunder Singh rashly and negligently hit her due to which her leg was fractured and she also sustained other injuries on her person. She was rushed to the Primary Health Centre, Lohaghat from where she was referred to Pilibhit. According to the claimant she was earning Rs.3000/- per month by agriculture work and she was also doing household works.

4) The opposite parties have contested the claim petition and have filed their respective written statements. The respondent no.1, Madan Singh has stated that the alleged motorcycle did not belong to him. Nor any vehicle belonging to him was being driven by Sunder Singh at the time of alleged accident.

5) Respondent no. 2, Ms. Beenu Bhandari filed written statement stating therein that the claim petition has been filed with incorrect allegations with a view to harass the respondents.

6) Respondent no. 3, Sunder Singh Dhek filed his written statement and has asserted that he did not know driving the vehicle and at the alleged date of accident he was not driving any vehicle.

7) In order to prove her case, the claimant examined herself as P.W.1, Sri Mahesh Singh as P.W.2 and Sri Trilok Singh as P.W.3. She has also filed copy of F.I.R. admit card of Gokhaley Hospital, X-ray plates and cash memos of medicines. Opposite parties examined D.W.1 Madan Singh, D.W.2 Surendra Singh and D.W.3 Beenu Bhandari.

8) The claims Tribunal considered the evidence adduced by both the parties and has arrived to the conclusion that no case under section 166 of the Motor Vehicles Act for grant of

compensation is made out and accordingly, dismissed the claim petition.

9) We have perused the statement of witnesses and documentary evidence adduced by the claimant as well as by the respondents.

10) P.W.1 Smt. Maheshwari Devi has stated in her statement that on 24.8.2002 at about 6.00 PM when she reached near her house, motorcycle No. UP 07A/1618, which was being driven by Sunder Singh rashly and negligently dashed her due to which she sustained grievous injuries.

11) In this case no first information report has been lodged in the Police Station. The claimant has filed photocopy of a paper claiming that the said complain has been lodged by the husband of the claimant in the Police Station, Lohaghat on 10.9.2002. This paper does not bear the signature of complainant nor there is any endorsement that a copy of said paper was actually delivered in the Police Station.

12) The claimant P.W.1 Maheshwari Devi has stated that Sunder Singh was driving motorcycle who hit her. She has stated the registration number of the vehicle as U.P. 07A/1618. In her cross-examination, she has categorically stated that it was the motorcycle, which caused injuries to her in the accident. She has stated that she knows the difference between motorcycle and scooter. The opposite parties have filed the registration certificate of the vehicle and UP 07A/1618 is a scooter which is registered in the name of respondent no. 2 Km. Beenu Negi. D.W.3 Beenu Negi has stated in her evidence on oath that she purchased vehicle No.07A/1618, which is Bajaj Scooter. She has also filed copy of registration certificate of the vehicle, which is paper no. 52-C on record. The registration

certificate shows that the vehicle in question is a scooter. P.W.2 Mahesh Singh who is the husband of the claimant has stated that the accident was caused by motorcycle and not by a scooter.

13) Apart from that an Inquiry was made from the Regional Transport Office, Dehradun regarding the registered owner of the vehicle in question and report has been submitted by the R.T.O. which is paper no. 19-D on record. According to this report the registered owner of vehicle No. UP 07A-1618 is Ms. Beenu Negi daughter of Sri J.S. Negi, Retired Deputy Superintendent of Police, Manav Kendra, Dehradun.

14) The claimant has also filed medical certificate issued by Gokhley Hospital, Pilibhit but no mention has been made by the doctor in the certificate that the injuries sustained by the injured from a motor accident. According to the claimant she was admitted in the Primary Health Centre, Lohaghat for treatment from where she was referred to Pilibhit but no medical certificate and injury report has been filed by the claimant in this regard.

15) The claimant filed application for compensation under section 166 of the Motor Vehicles Act. Section 166 (1) provides that an application for compensation may be made arising out of an accident of the nature specified in sub section (1) of section 165. Section 165 (1) of the Motor Vehicles Act reads as under:

A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation

in respect of accidents involving the death or, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both."

15) Thus the claimant has failed to prove that she sustained injuries by the vehicle as alleged by her in her claim petition and the opposite parties were in any way involved in the alleged accident. The claimant has failed to satisfy the test of sub section (1) of Section 165 of the Motor Vehicles Act. The evidence adduced by the claimant is self contradictory, which cannot be relied upon. The Claims Tribunal was therefore, justified to dismiss the claim petition. We find no illegality or material irregularity in the judgment and order passed by the Claims Tribunal.

16) The appeal lacks merit and is hereby dismissed.

17) There will be no order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

Dated: November 7, 2006

*Dhyani